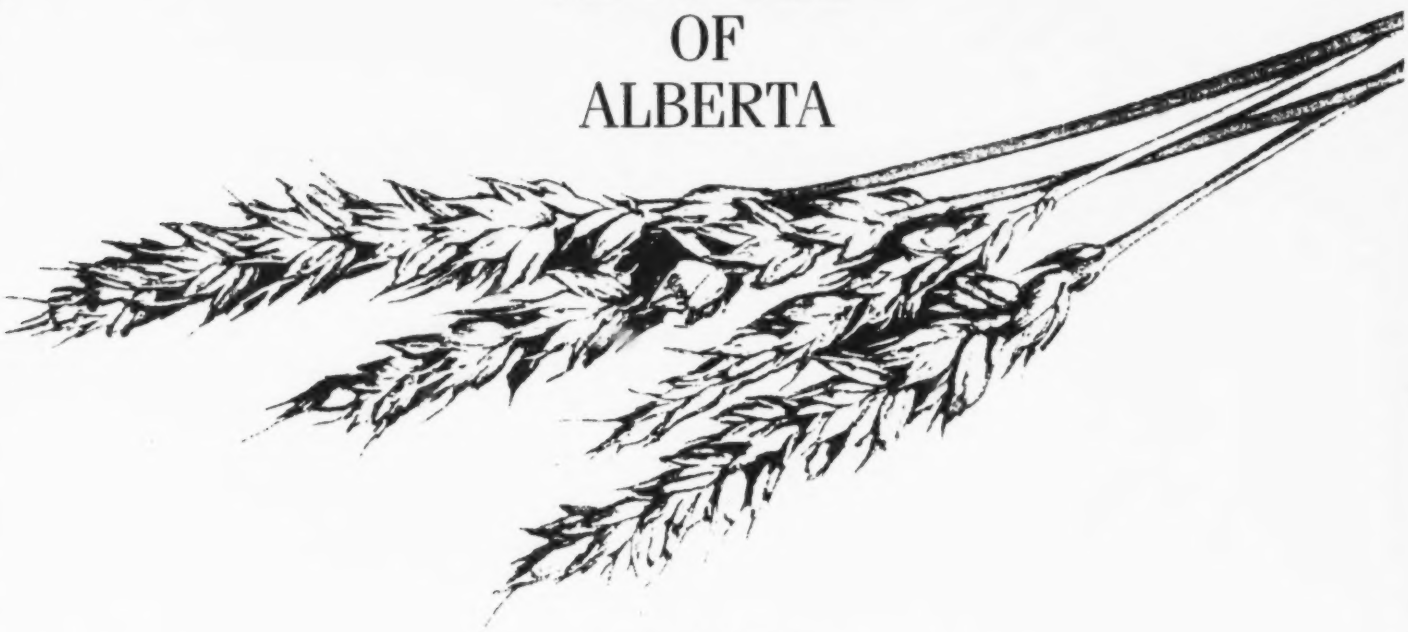
OFFICE OF THE FARMERS' ADVOCATE OF ALBERTA

ANNUAL REPORT 2002

Alberta
AGRICULTURE, FOOD AND RURAL DEVELOPMENT
Farmers' Advocate

THE FARMERS' ADVOCATE OF ALBERTA



Let the wealthly and great
Roll in splendor and state
I envy them not; I declare it.

I eat my own lamb
My chickens and ham
I shear my own fleece and I wear it.

I have lawns. I have bow'rs
I have fruit. I have flow'rs
The lark is my morning alarmer.

So jolly Boys now
Here's God speed, the Plough
Long Life and Success to the Farmer.

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PREFACE

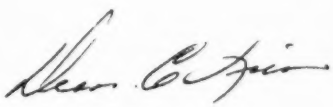
In our annual report we attempt to provide an insight into the workings of the Farmers' Advocate Office of Alberta. In response to feedback and interest expressed to us, this year's report focuses on some of the types of cases we have addressed.

We continue to provide a voice for rural Albertans in negotiations with the energy sector, municipal governments and fellow rural Albertans. We, of course, continue to administer the *Farm Implement Act*, the *Farm Implement Dealerships Act* and the Water Well Recovery and Restoration Program (WWRRP). We are also responsible for the nuisance part of the *Agricultural Operation Practices Act*. In addition, we provide administration for a Wildfire Cost Assessment Review Committee for the Ministry of Sustainable Resources Development.

The drought of 2002 had a significant effect on Alberta farmers, through stress and economical hardship due to the forced sale of livestock and a lack of feed. The cash flow situation became a serious problem. This was reflected by calls about machinery repairs rather than new equipment purchases.

The number of calls increased significantly. This indicates a couple of scenarios: the economic downturn overall in agriculture because of drought; and, increased farmer-awareness of the services our office provides. The Farmers' Advocate and assistants provide the empowerment necessary for farmers to better negotiate and manage their own affairs.

We hope this report provides a thumbnail sketch of the past year. As well, we wish to thank our Minister for her support and the appreciation afforded to us by other ministries.



1 GENERAL COMMENTS AND ACTIVITIES

In 2002, reduced cash receipts in the farming economy, due to drought, and the continued impact of the energy industry on farmland meant a steady flow of calls from rural Albertans. To respond to the calls, the Farmers' Advocate has five assistants and one administrative assistant.

Surface rights and landowner/energy sector relations continue to be a primary focus of the office. Strong crude oil and natural gas prices have buoyed energy sector activities. In turn, this has increased the need for landowners to protect their interests. Farmers want to ensure that long-term adverse effect is kept to a minimum, construction damage is limited and any agreements they enter into provide suitable compensation. Most enquiries relate to seismic concerns, surface leasing, pipeline rights-of-way and mineral rights. The focus is on compensation and access by the energy industry onto deeded or leased land for the purpose of exploration, development and production of hydrocarbons. The Farmers' Advocate Office (FAO) was also contacted on other matters including:

- chemicals
- farm buildings
- farm equipment repair work orders
- the *Farm Implement Act*
- fences
- financial problems (including bankruptcy)
- flooding and drainage
- gas co-ops and Rural Electrification Associations (R.E.A.s)
- groundwater (wells)
- hail, wind and pollution
- highways, roads and railways
- insurance
- irrigation
- leases (farm, grazing and surface)
- livestock (intensified and at-large)
- power lines
- reclamation
- right-of-way (access)
- standing timber
- trespass

Every year there are thousands of business transactions made by farmers with various companies, neighbours and corporations. Under the *Farm Implement Act*, certain obligations are legislated to protect both the seller and purchaser. However, there are many other transactions that are made based on trust alone. Once a handshake was all that was required. Today, businesses come and go, and often their obligations are forgotten.

During the past year we have seen more bankruptcies than normal. These have included farm machinery, grain and hay dealers. Farmers have been left unpaid for their deliveries of grain and hay to brokers, processors and feedlots. As a result, our office is constantly telling people to be careful about whom they deal with. We can advise farmers of procedures that may safeguard the payment for goods.

2002 was the first year under the *Agricultural Operations Practices Act* (AOPA). The mandate of this new legislation includes licensing, approving

and enforcing confined feeding operations (CFOs). Within this framework, the National Resources Conservation Board (NRCB) has the regulatory authority with the exception of instances where complaints are of a nuisance nature. Under AOPA, the Farmers' Advocate Office provides mediation on nuisance complaints. Failing this, a peer group review is conducted. In consultation with stakeholder groups, the Farmers' Advocate Office has selected peer review members. These are hands on operators who are knowledgeable about their industry and can provide positive direction to satisfy the complaint.

As an autonomous body, the Farmers' Advocate Office can act in a neutral and unbiased manner. This is evidenced by our involvement with AOPA and a new committee under the Sustainable Resource Development Ministry. The Wildfire Cost Assessment Review Committee looks at costs to farmers for fire fighting activities carried out by the Forestry Services.

A recent concern expressed by Alberta residents is water shortage and water contamination. As stewards of our most precious resource, it is important that everyone takes a role to ensure the safety of our groundwater. The proper use and disposal of chemicals is vitally important. Effluent from CFOs and livestock at large must be contained to prevent run-off. Any potential for groundwater contamination must be minimized. Water wells damaged by seismic operations need to be brought back into satisfactory condition by special treatment or the drilling of new wells. An application to the Water Well Restoration or Replacement Program (WWRRP) can be made when a well has been damaged through oil or gas related activity.

The FAO is also the voice of the rural community for numerous projects and working committees. We currently provide input to the:

- Provincial Rural Crime Watch Association
- Land Agents Advisory Committee
- Alberta Pipeline Environmental Steering Committee
- Alberta Environment on Oil and Gas Reclamation and Remediation Advisory Committee
- EUB-Appropriate Dispute Resolution Program
- Joint Government/Industry Geophysical Steering Committee
- Industry Landowner Relations Committee
- Alberta Trailnet Advisory Committee
- Alberta Energy & Utilities Board (AEUB) – Guide 50 Review

In addition to thousands of telephone inquiries, numerous requests for assistance came to the Farmers' Advocate Office in writing. In 2002, Farmers' Advocate staff travelled to every corner of the province to meet with and assist individual landowners, community groups, and agriculture and energy stakeholder groups. The one-window approach that the FAO provides to rural Albertans seems to meet their needs.

In the past year, the FAO has been approached by several landowners who enquired about the status of leases that are nearing their 50-year anniversary dates. Some of these leases have expired and some have not. It all depends on the wording of the lease agreement. If landowners find themselves with a lease signed in the early 50s, they should seek advice on the status of the lease. The Surface Rights Board has made several decisions with regard to leases that have expired on the 50-year date. These decisions are public information and can be obtained from the Surface Rights Board.

When contacted about entering into a surface lease or a right-of-way agreement, the FAO recommends landowners consider several factors. Some of these are:

- Don't sign a waiver giving up your 48-hour time period to review the material provided by the company. You need time to make equiries and consider your options.
- Make sure you are comfortable with the location. If not, you can attempt to negotiate the change in location with the company.
- Read each clause. If you don't understand its intent, ask the land agent to explain it. Clauses can be amended, added or deleted during negotiation with the company. Each change must be initialed by both the landowner and company representative. Once you sign the lease, it's a done deal. You can not change your mind. If the well is a producer, you will have to live with the terms in the lease for the life of the well. Be sure before you sign.
- Negotiate appropriate compensation.

Over the past year, the FAO has seen several new surface rights associations and synergy groups spring up in different areas of the province. The FAO has been asked to speak to numerous groups throughout the province and encourages landowners to participate in local organizations so they can become knowledgeable about energy activity in their area. The information sharing that takes place at this level enables landowners to be prepared when that land agent comes knocking at their door.

2 CASE SUMMARIES

Not As It Seemed

A frustrated farmer contacted the Farmers' Advocate Office (FAO) about a problem he was having with his neighbour and former owner of a portion of his farm. The nature of the problem was that the previous owner was still doing some farm cultivation.

The former owner, an elderly gentleman, had sold his home quarter of land to the complainant a year earlier. The terms of the purchase were such that in exchange for the transfer of title, the seller received a promissory note payable over a period of 10 years with the added condition that he would have a life interest in the building site and could live there unmolested for as long as he wished.

While there may have been some confusion in the elderly seller's mind on some terms of the sales agreement, there was no confusion as it related to him having had to pay the land taxes on the property in question for the last two years and that he had not received his land payment as specified in the promissory note.

After investigation by the FAO, the farmer who originally contacted our office was advised that if he would live up to the terms of the sales agreement, make his payments when due, and reimburse the previous owner for the two years back taxes, the relationship would undoubtedly improve. The FAO also advised the complainant that the office would check later to ascertain if matters were in hand.

Reasonable People – Reasonable Answers

A landowner contacted the Farmers' Advocate Office (FAO) to bring to our attention his problems, which were already on file from previous years. The Advocate had thought his case was resolved, but, unfortunately, it resurfaced.

The farmer was suffering on-going damages to his property from erosion and weed problems because of the manner in which an adjacent municipal water supply source was being operated.

The Farmers' Advocate had been instrumental at an earlier time in securing some remedial work for the complainant. However, as the years passed, maintenance by the municipality had been less than adequate. The farmer felt he was being ignored and asked the Farmers' Advocate to negotiate on his behalf.

A meeting was convened with the municipal authority, followed by negotiations with the authority's manager.

The result was an agreement to satisfy the landowner's requests. Both sides acted with dignity and forbearance for the other's problems.

The Farmers' Advocate found it a real pleasure to work with these people of goodwill.

Mediation – Not Always Successful

The Farmers' Advocate Office was requested by a government department to assist them in a difficult negotiation.

The continuity of a joint-lease was the subject with problems arising when one of the joint leaseholders died, leaving their heir as a participant.

The government department involved convened a meeting of all parties. The department went the extra mile in trying to accommodate the participants.

The existing joint leaseholder showed little compassion for anything other than his own self interest.

At the present time, a lease extension has been granted in order for the parties to the lease to have extra time to iron out their differences.

However, if nothing changes in the attitude of the existing leaseholder, everyone may be a loser. The Farmers' Advocate, as the situation now stands, can claim no credit in this case.

Inspection Only

A canola grower asked the Farmers' Advocate to inspect his field and give a written opinion on what he observed. The farmer had already had inspections done by other credible sources.

The situation was that the farmer had ordered and subsequently seeded normal canola (as opposed to Roundup™ tolerant varieties). The field in question, prior to seeding, was summerfallow. Extreme drought in the area this past summer resulted in the crop being written off by crop insurance. The crop was subsequently sprayed with Roundup™, with the idea that the area would be summerfallow for the rest of the year.

The Farmers' Advocate's inspection revealed that there was a plant frequency of about 25% of a full crop, much of it in a seed set condition. There were small isolated areas where you could see the original germination was poor but it was obvious a significant amount of the crop had not been desiccated by the application of Roundup™.

The farmer was very upset by this situation. The focus of his anger was on the company that supplied the seed.

The farmer, no doubt, had further interaction with the seed supplier. The Farmers' Advocate's report was one of several reviewed during these discussions.

Neighbours

Ranchers in Eastern Alberta have had no end of serious problems of drought and grasshoppers and, being the kind of enterprisers that they are, they have faired reasonably well, despite the circumstances.

However, they do not fold easily, and the old adage of "Good Fences Make Good Neighbours", holds ever so true, as long as both land owners agree on the type and location of the fence.

Two long-standing ranchers, bordering each other for years, had enough with the drought and no grass so they decided to make some claims about joint fences. Both being proud, it was not fitting for them to just argue it out. Instead, they called the Farmers' Advocate to settle the dispute. This was easily accomplished and both went home feeling they didn't lose face. Great ranchers, simple problems and still good neighbours.

The Right to Cancel A Deal

There is still a common misconception that the *Direct Sales Cancellation Act* applies to the purchase of farm machinery. That is, it is believed by some that you, as a purchaser, have three days (the times quoted to us vary) to be able to review the deal and cancel it if you want to. Several times our office has requested Alberta Justice to review this. Each time they have come back indicating that once the deal is signed, it becomes legal and binding as outlined in the provisions of the *Farm Implement Act*.

A retail agreement must be signed by both the purchaser and a representative of the dealership that has signing authority to accept the deal, i.e. the sales manager or a dealer principal. If the agreement is signed by only the customer and the salesman, then the agreement is binding once the farm implement is delivered.

In order to protect your investment, here are a few simple guidelines to follow:

- Dealing with the salesman is always a good idea because he is able to give you the after purchase service that you require.
- Once the agreement is signed, be sure that everything that was discussed during the making of the deal has been written on the contract. This should include any extra options, even the supply of a toy tractor or jacket and any extra warranties that may have been talked about. Examples are 50/50 parts or service warranty for 30 days or 100 hours. In that case the starting hour meter reading should be recorded.

If and when the communication lines break down between you and your dealership, please feel free to call our office to assist in the resolution of the problem.

What to do with a Problem Implement

Notice of 'failure to perform' is a very important part of the *Farm Implement Act* (FIA) Legislation. There are a number of common misconceptions with this section of the Act.

In the past year, several farmers were under the impression that a farm implement could simply be

returned to the dealer and an immediate refund would be made if the machine failed to perform to advertised specifications.

The following excerpt from the FIA defines the very specific process that must be adhered to in order to make the process successful.

Notices of Failure to Perform

7 (2) When a new farm implement that is properly used and maintained and used under reasonable operating conditions fails to perform the work for which it is intended in a satisfactory manner during

(a) any of the first 10 days of actual use of the farm implement, whether or not those days are consecutive, or

(b) the first 50 hours of actual use of the farm implement, whether or not that period is continuous,

whichever occurs first, from the time the farm implement is first used within the first normal season of use after it is delivered to the purchaser, the purchaser may, within that season, give notice under subsection (3) of the farm implement's failure to perform that work.

(3) A notice referred to in subsection (2) must be in writing and must be given to the Minister, the distributor and the dealer as soon as is reasonably possible after the failure occurs.

(4) On receiving notice under subsection (3), the dealer or distributor shall, not later than 7 working days during which reasonable operating conditions exist for that farm implement after the date on which the dealer or distributor received the notice, endeavour to make the farm implement perform in a satisfactory manner.

(5) If the dealer or distributor fails to make the farm implement perform in a satisfactory manner pursuant to subsection (4), the dealer or distributor shall, within 48 hours after the expiry of the period stated in subsection (4), provide the purchaser with a satisfactory substitute farm implement for the purchaser's use until the purchaser's farm implement is made to perform in a satisfactory manner.

A synopsis of the process is as follows:

1. File a *Notice of Failure* with the dealer, distributor and Farm Implement Act Administrator.
2. The dealer/distributor must be given the option to repair the implement.
3. If the repair cannot be made within the seven days, a satisfactory replacement must be provided.
4. If repair is not successful, the agreement will be reversed.

It has been the full intention of this office to ensure that any equipment repurchased under this section of the act be returned to the inventory/possession of the manufacturer. Until fully operational, no machinery should be allowed to be resold and should pose no liability on the dealer since they were not responsible for the design and construction of the farm implement.

A Deal Too Good to be True

What happens when a farmer isn't as cautious as he should be and takes a deal that looks too good to be true?

If you had purchased a tractor for about $10,000 less than current market conditions, you would think you had a good deal. It all appears to be so until the RCMP show up and claim the serial numbers on the tractor have been switched and, most likely, the tractor was stolen. Your tractor purchase of approximately $60,000 has now become a nightmare.

Who owns the tractor? If it can be proven that it is stolen, it belongs to the insurance company that had paid the dealership for the stolen tractor.

The auction company that consigned and sold the tractor had done its homework. When checked, the tractor was free and clear of all liens and encumbrances, according to the serial number it was carrying. Unfortunately, the serial number plates it was carrying had come from a tractor that had been written off in a fire insurance claim.

What will become of this problem? We don't know! Here is a summary of the facts, as we know them.

1. The tractor was consigned and sold at auction.
2. The tractor was resold by a 'tractor jockey' to a farmer.
3. In this case, the farmer is not protected in the same way as when purchasing from a licensed and bonded farm equipment dealership.
4. Once proven that this is indeed the stolen tractor, the insurance company can take possession of it.

Read next year's annual report to see how this one turned out!

A Satisfied Customer

The Farmers' Advocate Office was contacted by a farmer who was having trouble with an insurance damage claim. A major trucking company had a big rig breakdown on Highway 2. The rig was parked on the shoulder when a second big rig rear-ended it, pushing it onto the farmer's property and damaging approximately 300 feet of fencing.

The farmer had to move his cattle and make fence repairs. The farmer then sent an invoice to the insurance company for payment, but neither company would pay for the damages. He then turned to a lawyer to pursue payment, but to no avail. The farmer then contacted the Farmer's Advocate Office for help. The Farmers' Advocate Office contacted both companies and drew up an agreement that had the two insurance companies split the invoice costs on a 50/50 basis.

The farmer was very pleased with the Farmers' Advocate Office. He would have saved the legal fees and a lot of aggravation had he contacted our office before he sought legal counsel.

Block-Aid

The Farmers' Advocate office was contacted by an irate farmer about the way an oil company was handling its surface lease obligations after a minor blowout. The farmer and the company were at a stalemate as to damages both on-site and off-site. The situation escalated to the point where the farmer parked farm equipment on the service road and blocked access to the well site, not allowing the company or service providers access.

After numerous meetings between the farmer, the oil company and the Alberta Energy and Utilities Board (EUB) they were unable to resolve their differences. They contacted the Farmers' Advocate who facilitated an agreement setting out responsibilities for both the farmer and the oil company. A potentially serious problem was solved.

Caveats & More

When a company no longer has an interest in property, whether it is surface or mineral, the caveat placed against the title should be removed. This is not a difficult or onerous procedure, however, many companies have to be actively pursued to make them fulfil their fiduciary obligation to the property owner.

One such case arose with a freehold mineral owner. The mineral owner contacted the Farmers' Advocate for assistance in having caveats removed from the title as the lease had expired. If another company was looking to lease the existing mineral rights, they would not do so as four companies were identified as having an interest on the title.

After a few telephone calls, three of the companies complied and removed their caveats. The remaining company would not take the necessary steps to have their name removed from the title, even when forms were provided that only required signatures. The mineral owner had to take action and mailed them a Notice to Caveator to Take Proceedings on Caveat. The company then has 60 days to comply. If they don't or can't show an interest in the property under the *Land Titles Act* an owner can ask to have the caveat removed.

It is unfortunate that individuals have to take this route to have caveats removed from their title. The company who filed the caveat has the responsibility to remove it from the title when they no longer have an interest in the land.

Puzzled

The Farmers' Advocate was contacted by landowners who had a long-standing surface lease that was contaminated. The company had not paid annual compensation on this lease for many years and was making no attempt to clean up a very bad well site.

On behalf of the landowner, the Farmers' Advocate referred the matter to the government

agency responsible for non-payment of annual compensation. The last payments, made years ago, did not adequately reflect the current loss of use and adverse effect paid to neighbouring landowners. The government agency held a hearing and determined a fair rate of compensation. The landowners did not agree with the decision and have not applied to receive payment.

Had the landowners accepted the agency's decision, they would also have been eligible to apply for off-site damage as contamination had leached out beyond the lease and affected more of their land.

The puzzling aspect of this case is that the landowners could receive annual compensation, as well as payment for off-site damage each year until the lease is cleaned up but they chose not to.

Twenty-six Years to Get Payment

In 1976, a municipality entered into an agreement with a local landowner to purchase a portion of land to drill a well that would supply the village with water. A caveat was filed and the village completed all the improvements to operate the well, including a power line, waterline, pump and roadway.

A down payment was made to the landowner in 1976. The balance owing was not paid until 2002 when the son, who inherited the land, started making inquiries about the incomplete transaction. These inquiries initiated action on the part of the municipality who were advised to affect registration of their interest as a road plan at Land Titles. The new landowner was notified of the municipality's action and paid the outstanding balance agreed to in 1976.

The unfortunate part of this situation is that the well is located on the east side of the quarter section where there is no developed road allowance. The access road to the well comes off the west side road allowance and cuts the quarter in half. This creates an adverse effect to the landowner, who has to farm around the road. He does not receive any additional compensation for this inconvenience.

The Farmers' Advocate met with the municipality and discussed the matter of 26 years of unpaid interest. The municipal manager was agreeable to negotiating an interest payment, but the landowner decided to pursue the matter through legal channels.